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Patent

Attorney Docket No. 1034008-000003

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

David J. Burke et al.

Application No.: 10/773,406

Filing Date: February 9, 2004

Title: IMMUNOGLOBULIN FORMULATION AND METHOD OF PREPARATION THEREOF

Group Art Unit: 1644

Examiner: YUNSOO KIM

Confirmation No.: 6608

## AMENDMENT/REPLY TRANSMITTAL LETTER

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Enclosed is a reply for the above-identified patent application.

- ☐ A Petition for Extension of Time is also enclosed.
- ☐ Terminal Disclaimer(s) and the ☐ \$65.00 (2814) ☐ \$130.00 (1814) fee per Disclaimer due under 37 C.F.R. § 1.20(d) are also enclosed.
- ☐ Also enclosed is/are \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- ☐ Small entity status is hereby claimed.
- ☐ Applicant(s) requests continued examination under 37 C.F.R. § 1.114 and enclose the ☐ \$395.00 (2801) ☐ \$790.00 (1801) fee due under 37 C.F.R. § 1.17(e).
- ☐ Applicant(s) requests that any previously unentered after final amendments not be entered. Continued examination is requested based on the enclosed documents identified above.
- ☐ Applicant(s) previously submitted \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ on \_\_\_\_\_  
for which continued examination is requested.
- ☐ Applicant(s) requests suspension of action by the Office until at least \_\_\_\_\_, which does not exceed three months from the filing of this RCE, in accordance with 37 C.F.R. § 1.103(c). The required fee under 37 C.F.R. § 1.17(i) is enclosed.
- ☐ A Request for Entry and Consideration of Submission under 37 C.F.R. § 1.129(a) (1809/2809) is also enclosed.

**Buchanan Ingersoll PC**

ATTORNEYS

Including attorneys from Burns Doane Swecker &amp; Mathis

- ☒ No additional claim fee is required.
- ☐ An additional claim fee is required, and is calculated as shown below.

AMENDED CLAIMS					
	No. of Claims	Highest No. of Claims Previously Paid For	Extra Claims	Rate	Additional Fee
Total Claims		MINUS =	0	x \$50.00 (1202) =	\$ 0.00
Independent Claims		MINUS =	0	x \$200.00 (1201) =	\$ 0.00
If Amendment adds multiple dependent claims, add \$360.00 (1203)					
Total Claim Amendment Fee					\$ 0.00
<input type="checkbox"/> Small Entity Status claimed - subtract 50% of Total Claim Amendment Fee					\$ 0.00
<b>TOTAL ADDITIONAL CLAIM FEE DUE FOR THIS AMENDMENT</b>					<b>\$ 0.00</b>

- ☐ A check in the amount of \_\_\_\_\_ is enclosed for the fee due.
- ☐ Charge \_\_\_\_\_ to Deposit Account No. 02-4800.
- ☐ Charge \_\_\_\_\_ to credit card. Form PTO-2038 is attached.

The Director is hereby authorized to charge any appropriate fees under 37 C.F.R. §§ 1.16, 1.17, 1.20(d) and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 02-4800. This paper is submitted in duplicate.

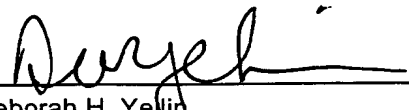
Respectfully submitted,

BUCHANAN INGERSOLL PC

P.O. Box 1404  
Alexandria, Virginia 22313-1404  
(703) 836-6620

Date: April 3, 2006

By

  
Deborah H. Yellin  
Registration No. 45,904



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inter Patent Application of	)	
David J. Burke et al.	)	Group Art Unit: 1644
Application No.: 10/773,406	)	Examiner: Yunsoo Kim
Filed: February 9, 2004	)	Confirmation No.: 6608
For: IMMUNOGLOBULIN	)	
FORMULATION AND METHOD OF	)	
PREPARATION THEREOF	)	

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Restriction Requirement mailed March 2, 2006, Applicants hereby elect **with traverse** the claims of Group I (claims 1-16, 29-32, and 41), which are drawn to a stable antibody formulation.

The Applicants traverse for at least the following reasons. Under M.P.E.P § 803, a restriction is proper if the subject matter can be restricted into one of two or more claimed inventions, and these inventions are either independent (M.P.E.P § 806.04) or distinct (M.P.E.P § 806.05). However, the second element for a restriction requirement to be proper is that if the search and examination of an entire application can be made without serious burden, the examiner must examine the entire application on the merits, even though it includes claims to independent and distinct inventions.

Thus, Applicants respectfully assert that the inventions of Groups I-III should be examined together. Applicants respectfully submit that the inventions of Groups I-III are closely related, as all concern a stable antibody formulation, and that a proper search of any of the claims should, by necessity, require a proper search of the others. Applicants submit that all of the claims can be searched simultaneously, and that a duplicative search, with possibly inconsistent results, may occur if the restriction requirement is maintained.

Applicants submit that any nominal burden placed upon the Examiner to search accordingly to determine the art relevant to Applicants' overall invention is significantly outweighed by the public's interest in not having to obtain and study many separate patents in order to have available all of the issued patent claims covering Applicants' invention. The alternative is to proceed with the filing of multiple applications, each consisting of generally the same disclosure, and each being subjected to essentially the same search, perhaps by different Examiners on different occasions. This process would place an unnecessary burden on both the Patent and Trademark Office and on the Applicants.

Applicants have no intention of abandoning any non-elected subject matter and expressly reserve the right to file one or more continuation and/or divisional applications directed to the non-elected subject matter.

Applicants earnestly solicits favorable consideration of the above response and early passage to issue the present application. The Examiner is invited to contact the undersigned at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted,

BUCHANAN INGERSOLL PC

Date: April 3, 2006

By: \_\_\_\_\_

  
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Registration No. 45,904

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